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House of Representatives

The House met at noon and was called to order by the Speaker pro tempore (Mr. FERGUSON).

DESIGNATION OF SPEAKER PRO TEMPORE

The SPEAKER pro tempore laid before the House the following communication from the Speaker:

WASHINGTON, DC,
October 31, 2017.

I hereby appoint the Honorable A. DREW FERGUSON, IV to act as Speaker pro tempore on this day.

PAUL D. RYAN,
Speaker of the House of Representatives.

MORNING-HOUR DEBATE

The SPEAKER pro tempore. Pursuant to the order of the House of January 3, 2017, the Chair will now recognize Members from lists submitted by the majority and minority leaders for morning-hour debate.

The Chair will alternate recognition between the parties. All time shall be equally allocated between the parties, and in no event shall debate continue beyond 1:50 p.m. Each Member, other than the majority and minority leaders and the minority whip, shall be limited to 5 minutes.

LWCF PARITY FOR TERRITORIES AND DC ACT

The SPEAKER pro tempore. The Chair recognizes the gentlewoman from Guam (Ms. BORDALLO) for 5 minutes.

Ms. BORDALLO. Mr. Speaker, I am indeed proud to introduce the LWCF Parity for Territories and D.C. Act, with the support of all six Members of the House representing our U.S. territories and the District of Columbia as original cosponsors.

Mr. Speaker, this bipartisan bill gives parity to Guam, the other territories, and D.C. in annual funding from

the Federal Land and Water Conservation Fund.

Current law requires the territories and D.C. to split six ways a single State's annual LWCF allocation. This bill fixes this disparity by providing a full, State-equivalent share of Land and Water Conservation Fund funding for each territory and D.C. every year.

This additional funding is needed to improve our public parks, our outdoor sports fields, and our community open spaces on Guam and the other territories, especially as Puerto Rico and the U.S. Virgin Islands rebuild from recent hurricanes.

So, Mr. Speaker, I encourage our colleagues to cosponsor this bipartisan legislation and support the LWCF parity for the territories and the District of Columbia.

WE MUST NOT ABUSE THE FOURTH AMENDMENT

The SPEAKER pro tempore. The Chair recognizes the gentleman from Texas (Mr. POE) for 5 minutes.

Mr. POE of Texas. Mr. Speaker, governments, militaries, and civilizations sometimes ignore history to justify their actions against individuals.

A bit of history is important here. When the British controlled the Colonies, they heavily taxed the Colonies. Citizens had to pay a tax on goods they brought in to the Colonies. The Colonies had no say on the imposition of those taxes. That is another issue.

The King issued writs of assistance. What that was was a piece of paper allowing the British military to go into businesses and homes, unreasonably, to search to see if the Colonies were paying the tax on imported goods. For example, John Hancock was a merchant. They would search his business to see if he had a tax stamp on the rum he brought the Colonies.

The right of privacy and the right to say something about your taxes were

two reasons for the American Revolution that came about. The right of privacy is a natural right, as Thomas Jefferson said, one of the rights given to us by our Creator.

So, our ancestors wrote the Fourth Amendment, unique to the United States, and here is what it says:

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation"—that means the officer has to swear to it—"and particularly describing the place to be searched, and the persons or things to be seized"—Fourth Amendment.

So what does that have to do with us today? I will explain.

Congress has passed the FISA legislation, the Foreign Intelligence Surveillance Act, which allows government to go after terrorists and people who are working as an agent of a foreign government and search their information. They go to a secret court and get a secret warrant—it is called a FISA warrant—from a FISA judge to allow that search of all that information. Separate the bad guys from Americans who they may be communicating with unrelated to terrorism. They may be cousins talking about whatever. But government, our government, NSA, seizes that information on Americans—emails, conversations, text messages—seizes all that information and keeps it forever.

And here is what happens in the violation of Americans' right of privacy: Government then can go back into that information, unrelated to terrorism, to search to see if those people are paying their taxes. Maybe somebody didn't pay their taxes on importation of Irish whiskey. So the government, IRS, files a criminal case against that American citizen.

□ This symbol represents the time of day during the House proceedings, e.g., □ 1407 is 2:07 p.m.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.



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Remember, all of that information was based upon no probable cause warrant issued by a real judge.

We are getting ready to reauthorize, maybe, FISA, the Foreign Intelligence Surveillance Act. Before we do that, we need to protect Americans' right of privacy. It is in a section called 702. It really gets down in the weeds. 702 has been abused by government to seize American information and then keep it forever. Government then peruses that, based upon their high-tech guys in the NSA, to see if crimes were committed or not. They have no warrant, no probable cause, nobody sworn to the warrant.

I used to be a judge. I signed lots of probable cause warrants. But here it is just seized because government says: Well, we have got it because we were looking for a terrorist and it is an incidental search, and we want to keep it.

That is a violation of the Constitution. We should make sure Americans' right of privacy is protected before we reauthorize FISA.

Mr. Speaker, I include in the RECORD this article, "Secret Court Rebukes NSA for 5-Year Illegal Surveillance of U.S. Citizens," to illustrate.

SECRET COURT REBUKES NSA FOR 5-YEAR
ILLEGAL SURVEILLANCE OF U.S. CITIZENS
(By Tim Johnson)

WASHINGTON.—U.S. intelligence agencies conducted illegal surveillance on American citizens over a five-year period, a practice that earned them a sharp rebuke from a secret court that called the matter a "very serious" constitutional issue.

The criticism is in a lengthy secret ruling that lays bare some of the frictions between the Foreign Intelligence Surveillance Court and U.S. intelligence agencies obligated to obtain the court's approval for surveillance activities.

The ruling, dated April 26 and bearing the label "top secret," was obtained and published Thursday by the news site Circa.

It is rare that such rulings see the light of day, and the lengthy unraveling of issues in the 99-page document opens a window on how the secret federal court oversees surveillance activities and seeks to curtail those that it deems overstep legal authority.

The document, signed by Judge Rosemary M. Collyer, said the court had learned in a notice filed Oct. 26, 2016, that National Security Agency analysts had been conducting prohibited queries of databases "with much greater frequency than had previously been disclosed to the court."

It said a judge chastised the NSA's inspector general and Office of Compliance for Operations for an "institutional 'lack of candor'" for failing to inform the court. It described the matter as "a very serious Fourth Amendment issue."

The Fourth Amendment protects people from unreasonable searches and seizures by the government, and is a constitutional bedrock protection against intrusion.

Parts of the ruling were redacted, including sections that give an indication of the extent of the illegal surveillance, which the NSA told the court in a Jan. 3 notice was partly the fault of "human error" and "system design issues" rather than intentional illegal searches.

The NSA inspector general's office tallied up the number of prohibited searches conducted in a three-month period in 2015, but the number of analysts who made the

searches and the number of queries were blacked out in the ruling.

The NSA gathers communications in ways known as "upstream" and "downstream" collection. Upstream collection occurs when data are captured as they move through massive data highways—the internet backbone—within the United States. Downstream collection occurs as data move outside the country along fiber optic cables and satellite links.

Data captured from both upstream and downstream sources are stored in massive databases, available to be searched when analysts need to, often months or as much as two years after the captures took place.

The prohibited searches the court mentioned involved NSA queries into the upstream databanks, which constitute a fraction of all the data NSA captures around the globe but are more likely to contain the emails and phone calls of people in the United States.

Federal law empowers the NSA and CIA to battle foreign terrorist actions against the United States by collecting the electronic communications of targets believed to be outside the country. While communications of U.S. citizens or residents may get hoovered up in such sweeps, they are considered "incidental" and must be "minimized"—removing the identities of Americans—before broader distribution.

The court filing noted an NSA decision March 30 to narrow collection of "upstream" data within the United States. Under that decision, the NSA acknowledged that it had erred in sweeping up the communications of U.S. citizens or residents but said those errors "were not willful." Even so, the NSA said it would no longer collect certain kinds of data known as "about" communications, in which a U.S. citizen was merely mentioned.

The NSA announced that change publicly on April 28, two days after the court ruling, saying the agency would limit its sweeps to communications either directly to or from a foreign intelligence target. That change would reduce "the likelihood that NSA will acquire communications of U.S. persons or others who are not in direct contact with one of the agency's foreign intelligence targets."

The court document also criticized the FBI's distribution of intelligence data, saying it had disclosed raw surveillance data to sectors of its bureaucracy "largely staffed by private contractors."

The "contractors had access to raw FISA information that went well beyond what was necessary to respond to the FBI's requests," it said, adding that the bureau discontinued the practice on April 18, 2016.

Mr. POE of Texas. Mr. Speaker, we must remember history. We must not abuse the Fourth Amendment. It is Congress' responsibility to protect the natural right of citizens' right of privacy. Get a warrant or don't make the search.

And that is just the way it is.

LIMIT PRESIDENTIAL PARDON

The SPEAKER pro tempore. The Chair recognizes the gentleman from Tennessee (Mr. COHEN) for 5 minutes.

Mr. COHEN. Mr. Speaker, I rise today in support of a constitutional amendment I have introduced today to prevent the President of the United States, or any future President of the United States, from pardoning himself or herself, members of their family, members of their administration, or

members of their Presidential campaign.

Monday's indictment of President Trump's campaign chairman, Paul Manafort, and guilty plea of another campaign staff member demonstrate how important it is for Congress to act.

The pardon power is supposed to be a safety valve against injustice, a vestige from when we were part of Britain and the King had this power. We are no longer part of Britain, and that power should not be as complete as it is. It is not supposed to be a way for Presidents to put themselves, their families, and members of their administration and their campaign team above the law, to obstruct justice if there is an investigation of wrongdoing.

Unless we change the Constitution, this is how it can be used and may be used. We should stop this conflict of interest from ever arising.

There are already serious questions swirling around the current President, his family, and members of his administration and his campaign staff, including possible collusion with Russia during the 2016 Presidential election currently being investigated by special counsel Robert Mueller. To ensure that everyone is treated equally under the law, we need to amend the Constitution to narrow the scope of the pardon power.

For some who may say this is only because of the current President, I would say: I objected to the pardon of the brother of a President in the past; in 1977, I proposed changing the pardon power in Tennessee through a constitutional convention item that would have said four Supreme Court Justices could disapprove of a gubernatorial pardon; and I also proposed in 2007, in this Congress, a change in the pardon power with the Supreme Court of our United States where a vote of six members could veto a pardon.

The pardon power is a vestige of a day gone by. It is not something that we should have complete and total ability of the President to use to pardon whomever and whatever he pleases and to obstruct justice.

I ask my fellow Members to join me in this amendment to protect America, to see that our Constitution is current and reflects our values, and to not be complicit in any activities that this President may use with the pardon power to free up wrongdoers.

CONGRATULATING EISENHOWER MEMORIAL COMMISSION

The SPEAKER pro tempore. The Chair recognizes the gentleman from Kansas (Mr. MARSHALL) for 5 minutes.

Mr. MARSHALL. Mr. Speaker, growing up in Kansas, I had many opportunities to visit the Dwight D. Eisenhower Presidential Library, Museum and Boyhood Home.

Some of my greatest memories go back to visiting Ike: on my 10th birthday, my entire family drove up to Abilene, Kansas, to visit the museum, and,